

January 11, 2008

Bureau of Land Management  
Oregon/Washington State Office  
ATTN: Western Oregon Planning Revision  
P.O. Box 2965  
Portland, OR 97208

**Re: Western Oregon Plan Revision Planning Criteria**

To Whom It May Concern:

Please accept these comments on behalf of the Northwest Environmental Defense Center (NEDC) regarding the Draft Environmental Impact Statement (DEIS) for the Western Oregon Plan Revisions (WOPR). NEDC is a nonprofit organization dedicated to preserving the environment of the Pacific Northwest. Our members and staff have enjoyed using BLM lands in Western Oregon, and derive recreational, aesthetic, scientific, spiritual, and educational value from these lands, and intend to do so in the future. In the final EIS for the WOPR, NEDC strongly urges BLM to address inadequacies in the analysis of impacts of the alternatives on water quality and endangered species.

**Watersheds**

NEDC is concerned that the preferred alternative will have a profound detrimental effect on the quality of water in and out of the plan area. Specifically, we are concerned that the preferred alternative will lead to violations of the Clean Water Act. Over 10,000 miles of the 143,044 miles of streams and rivers in the planning area are already 303(d) listed as impaired for at least one water quality measure.<sup>1</sup> (DEIS 365.) The DEIS focuses on the impacts to 704 miles (7%) of those impaired streams in watersheds under BLM ownership, but does not adequately address impacts on listed waters downstream from those actually on BLM land.<sup>2</sup>

The BLM's focus on 303(d) listed streams under BLM ownership and those not under BLM ownership, even though all of them are within the planning area, is worrisome. The EIS ought to make the plan's effect on all affected streams within the planning area, including those not under BLM ownership. In addition, the EIS should address all streams to be affected by the proposed action including streams not currently listed but likely to be listed as a result of this action.

*Why doesn't the DEIS discuss the effects of the action alternatives on 303(d) listed streams that are in the plan area but outside of BLM ownership, as well as streams that are not 303(d) listed?*

*How will the action alternatives take into account Clean Water Act requirements for downstream effects, specifically considering the checkerboard pattern of stream and land ownership in the plan area?*

Also, in discussing the management objectives and actions that would be common to all of the plan alternatives, the DEIS is vague on standards for protecting riparian areas when economic interests are implicated. For example, the DEIS states that harvesting might occur within the riparian

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<sup>1</sup> Draft Environmental Impact Statement for the Revision of the Resource Management Plans of Land Management Districts, 365 (Aug. 2007) (hereinafter DEIS).

<sup>2</sup> Id. at 365-66, fig 97.

management areas that are not in the harvest land base “for safety or operational reasons.”<sup>3</sup> The BLM should elaborate upon the operational or safety reasons that might require harvesting in protected areas. It is also unclear what constitutes the “incidental trees” covered by this exception.<sup>4</sup> Further, the DEIS explains that outside of riparian management areas conifer growth would replace brush or hardwoods, unless the hardwoods would be more profitable than conifer.<sup>5</sup> Within the riparian management areas conifer encroachment would be removed. It is difficult to discern the standard used to determine “encroachment.” Without a better description of these methods and standards used when making decisions to remove protections from certain riparian areas, it is difficult to determine the extent of the protection and potential impact to the environment. The level of protection afforded riparian buffer zones is particularly vital given the sensitivity of the riparian management areas.

*What standards would the BLM use in determining whether or not conifer growth was encroaching on riparian management area land?*

*What methods would be used for removing encroaching conifers from riparian management areas?*

*How would the standards of encroachment and the methods of removal account for the diminished size of the riparian management area in the preferred alternative?*

## **A. Temperature**

Temperature is the most common 303(d) impairment for streams in the plan area, covering 569 miles of BLM streams and 4,877 miles of other streams in the plan area.<sup>6</sup> Despite the acknowledgment that multiple factors influence stream temperature, the DEIS only addresses the effect of solar radiation. This single-minded approach to stream temperature neglects the complex reality of changing stream and climate conditions.

The BLM determined that beyond an 80% effective shade level, there was no measurable reduction in stream temperature related to shade level.<sup>7</sup> The BLM bases its calculations for zone-specific management actions in the riparian management areas on this statistic, citing only one 1996 study.

*Can the BLM show more evidence than the Boyd 1996 study that 80% effective shade levels have the same measurable effect on stream temperature as higher effective shade levels?*

When applying the 80% effective shade standard to the riparian management areas, the DEIS indicates that the preferred alternative contemplates harvesting in the secondary shade zone<sup>8</sup> which extends well within the 100-foot buffer zone protected<sup>9</sup>. This is a drastic reduction from the current 360-foot wide riparian buffer that is currently protected from harvesting and requires strong scientific evidence to support such a reduction in protection. The DEIS is misleading when it states that there would be 100 feet of protection under alternatives 1 and 2. The only complete protection would be within the much smaller primary shade zone, and even that may be subject to “incidental tree” harvest. The BLM states that the first 12 to 60 feet are usually the most important for shading streams during

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<sup>3</sup> *Id.* at 52.

<sup>4</sup> *Id.* at 756.

<sup>5</sup> *Id.* at 52.

<sup>6</sup> *Id.* at 365.

<sup>7</sup> *Id.* at 368.

<sup>8</sup> *Id.* at 7554-55.

<sup>9</sup> *Id.* at 369.

midday solar radiation.<sup>10</sup> Despite this, under the preferred alternative, the riparian management area given full protection from harvesting is less than 60 feet from the stream.

*How did the BLM determine that the primary shade zone would be effective for establishing non-harvested stream bank zones that would meet the BLM's Clean Water Act responsibilities of improving the quality of water that is 303(d) listed for temperature?*

The preferred alternative would maintain 80% effective or potential shade from 25 to 60 feet - whichever is less. (DEIS 79.) This standard is very unclear. Nowhere else in the DEIS is potential shade discussed or explained.

*What does the BLM mean by 80% "potential shade"? How has the BLM determined that "potential shade" would be as protective as "effective shade"?*

*How will maintaining these minimum standards ("whichever is less") for shade levels of plan waters that are already 303(d) listed for temperature improve the integrity of the plan waters as required by the Clean Water Act?*

The DEIS does not provide enough scientific evidence to back up standards leading to such drastic changes in riparian management. The BLM should consider the interrelated complexities inherent in reducing such a substantial amount of protected riparian land in addition to shade levels when determining how much riparian land should be protected.

## **B. Dissolved Oxygen**

Although dissolved oxygen is the second most common 303(d) listing for streams in the plan area, the DEIS only addresses it with two paragraphs.<sup>11</sup> Later in the DEIS, detailed consideration of dissolved oxygen is dismissed, citing the two paragraphs discussed above.<sup>12</sup> Considering the BLM's obligations under the Clean Water Act as well as the number of streams in the plan area that are 303(d) listed for dissolved oxygen, such a cursory discussion is inadequate. The BLM should address the complex factors that will affect dissolved oxygen levels in plan area waters.

*Does the BLM have specific evidence showing how the effect on temperature and sediment levels from each action alternative would impact dissolved oxygen levels?*

*Has the BLM considered other possible effects the alternatives might have on dissolved oxygen levels?*

*If the protected riparian buffers are reduced according to the action alternatives can the BLM show that the harvesting activity in the formerly protected buffer areas will not result in a loading of organic matter and sediment to such a degree that current naturally mitigating factors would not offset the resulting depletion in dissolved oxygen?*

## **C. Sediment**

The fourth most common 303(d) listing of plan area streams is for sediment. The preferred alternative predicts the need to build over 600 miles of new road.<sup>13</sup> The DEIS also states, however, that sediment deposit levels resulting from roads would be similar between the preferred alternative and the no action

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<sup>10</sup> *Id.* at 750.

<sup>11</sup> *Id.* at 371.

<sup>12</sup> *Id.* at 745.

<sup>13</sup> *Id.* at 1111.

plan because under the preferred alternative fewer roads would be constructed within a sediment delivery distance of streams. It is unclear if the DEIS takes into account the changing nature of the riparian management areas when making these calculations.

*How will the decreased riparian buffer zones affect the sediment delivery distance to streams?*

*How will the decreased riparian buffer zones affect the amount of sediment delivered to streams from new roads proposed by the action alternatives?*

The DEIS assumes that 550 miles of road will be decommissioned in the next ten years, based on the levels of use in the last decade. It is not clear that this baseline is appropriate considering that the action alternatives propose significant increased harvesting and road use.

*What specific roads would be decommissioned based on the projected use under the action alternatives?*

*What is the likelihood that these roads will, in fact, be decommissioned based on BLM commitment and funding? If decommissioning is not reasonably certain to occur, what other mitigation does BLM propose for sediment delivery from existing roads?*

The DEIS states that approximately 50% of the regeneration harvest units would be broadcast burned and that protected lands in riparian management areas would act as “effective filter strips and prevent sediment delivery.”<sup>14</sup> Those strips of unburned forest, however, would be of a width determined by a standard of the narrowest strip necessary for providing 80% effective or potential shade. The DEIS does not discuss how it determined that the same width would be effective at preventing sediment delivery.

*How did the BLM determine that the riparian land barely wide enough to provide 80% effective or potential shade would also be sufficient to act as an effective filter strip to prevent sediment delivery?*

## **Endangered Species**

The Endangered Species Act (ESA) prohibits implementation of management plans that jeopardize the existence of endangered species or destroy or adversely modify their habitat.<sup>15</sup> Thus, lands must be managed in a manner that will not cause jeopardy to protected species or adversely modify or destroy critical habitat. “The provisions of the Endangered Species Act must be enforced despite any adverse effects upon the amount of timber available on O&C lands.”<sup>16</sup> The purpose of ‘critical habitat’ is intended to facilitate species survival as well as species recovery.<sup>17</sup> Recently, the Ninth Circuit held that “‘destruction or adverse modification’ could occur when sufficient critical habitat is lost so as to threaten a species’ recovery even if there remains sufficient critical habitat for the species’ survival” and that such analysis must take into account recovery of the species.<sup>18</sup>

The DEIS is inconsistent with the ESA because it fails to make any analysis of WOPR’s effects to populations of the northern spotted owl or the marbled murrelet. For both the spotted owl and the

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<sup>14</sup> *Id.* at 763.

<sup>15</sup> Endangered Species Act of 1973, 16 U.S.C. § 1536 (a)(1) (2000).

<sup>16</sup> *Portland Audubon Society v Lujan*, 795 F.Supp 1489, 1506 (D. Ore. 1992), *aff’d*, 998 F.2d 705 (9th Cir. 1993).

<sup>17</sup> *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1070 (9th Cir. 2004).

<sup>18</sup> *Id.*

marbled murrelet, the DEIS claims that the effects to population do not need to be analyzed because population is impacted by many factors in addition to habitat.<sup>19</sup> How is it possible to know if reductions in suitable and critical habitat will have an impact on endangered species if the populations are not analyzed? BLM's approach fails to comply with the ESA as well as the disclosure and analysis requirements of the National Environmental Policy Act.

*How does BLM plan to avoid jeopardy to these endangered species if the populations of those species are not analyzed in the DEIS?*

It is impossible for BLM to determine whether there are significant impacts to listed species without analyzing the projects in terms of impacts to these species, including the cumulative impacts to these species. The ESA requires BLM to use the best available scientific and commercial data in assessing the impacts to species, which includes surveys.<sup>20</sup> The DEIS did not reference any population studies or surveys, so it is unreasonable to determine that the plan is not likely to adversely affect the listed species under section 7 of the ESA.<sup>21</sup> Apart from not analyzing populations in the DEIS, under the preferred alternative, surveys for marbled murrelet nesting sites would actually cease, resulting in no protection for the 592 nesting sites predicted to be identified under the no action alternative.<sup>22</sup>

The DEIS is also insufficient in its analysis of critical habitat units designated by FWS for the northern spotted owl and the marbled murrelet. Designated critical habitat units are not central to the habitat analysis in the DEIS. It states, "None of the alternatives align land use allocations with designated critical habitat units or include management direction specific to designated critical habitat units."<sup>23</sup> Furthermore, "the development of suitable habitat within critical habitat units would not show consistent patterns for any of the alternatives."<sup>24</sup>

The critical habitat unit analysis and disclosure that is present is insufficient in alternatives 2 and 3 under both the ESA and NEPA. The DEIS allows for a significant reduction of suitable habitat in areas designated critical habitat for both the northern spotted owl and the marbled murrelet without analyzing or disclosing how the reductions would impact either species.<sup>25</sup> Alternatives 2 and 3 allow for a several percentage point reduction of suitable habitat for spotted owls within critical habitat units. For the marbled murrelet, the late-successional reserves in alternative 2 (the preferred alternative) do not encompass all of the murrelet's critical habitat units, so there would be a significant reduction in suitable habitat in the critical habitat units when compared to the no action alternative and alternative 1.<sup>26</sup> The preferred alternative anticipates a decrease in habitat in roughly two-thirds of critical habitat units. The reduction of late successional reserves by thirty-five percent over the no action alternative would appear to be a significant degradation of habitat. Under alternative 3, almost all marbled murrelet critical habitat units would be open to harvests that would remove nesting grounds.<sup>27</sup> How can the reduction of critical habitat be allowed if there is no analysis of the impact on population or recovery or disclosure of this analysis in the DEIS? These failures violate both the ESA and NEPA.

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<sup>19</sup> DEIS 634, 674.

<sup>20</sup> 16 U.S.C. § 1536(a)(2).

<sup>21</sup> 16 U.S.C. § 1536(b).

<sup>22</sup> DEIS 674.

<sup>23</sup> *Id.* at 1042.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1042, 1060.

<sup>26</sup> *Id.* at 1060.

<sup>27</sup> *Id.*

Overall, the DEIS fails to adequately consider the impacts of decreasing habitat for the northern spotted owl and the marbled murrelet. Because the DEIS is huge document with many pages devoted to spotted owl and marbled murrelet habitat, information on impacts to the population and recovery of the species is vital.

NEDC requests more information on the likely adverse impacts to endangered species and to water quality under WOPR. NEDC would also like the BLM to reconsider the benefits of the no action alternative which we support. Thank you for this opportunity to comment on the proposed management of these important lands.

Sincerely,

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Bridget Donegan  
Carson Whitehead

Student members, Northwest Environmental Defense Center